



MASTER SERVICES AGREEMENT

BACKGROUND

- A. Simwood eSMS Limited, Registered in England and Wales No. 03379831 (“Simwood”), is authorised under the Act to run an Electronic Communications Network and to provide Electronic Communications Services in the United Kingdom.
- B. The Company is authorised under the Act to run an Electronic Communications Network and/or to provide Electronic Communications Services in the United Kingdom.
- C. The Company agrees that this Master Services Agreement shall be effective immediately that Simwood Accepts any request for Services placed by the Company via the Simwood Website and the Customer shall be bound by its terms.

DEFINITIONS

1 Interpretation

- 1.1 In this Agreement terms and expressions have the following meanings unless the context otherwise requires:

“Accept” written confirmation by Simwood that they have received and accepted a request for Service submitted by the Company via the Website and Acceptance shall be construed accordingly;

“Act” the Communications Act 2003;

“Agreement” this document including any schedule hereto, as the same may be varied, amended or extended from time to time in accordance with Clause 15.4;

“Artificial Inflation of Traffic” any situation where Calls:

- (a) are made, generated, stimulated, and/or prolonged for the direct or indirect benefit of any entity (including a natural person) operating, hosting or otherwise connected with an electronic communications service as a result of any activity by or on behalf of such entity; and
- (b) result in a calling pattern which is disproportionate to the overall amount, duration and/or extent of Calls which would be expected from:-
 - i. a good faith usage; or
 - ii. an acceptable and reasonable commercial practice relating to the operation of Electronic Communications Networks;



“Billing Period”	a calendar month or such other period as is agreed in writing between the parties;
“BT”	British Telecommunications plc of 81 Newgate Street, London EC1A 7AJ registered in England No. 1800000;
“Business Day”	any day (other than a Saturday or a Sunday) on which clearing banks are open in London for a full range of commercial banking transactions;
“Call”	a signal, message or communication which can be silent, visual (including text and data) or spoken;
“Charges”	the monetary amounts resulting from applying the Rates and Simwood’s calculation methodology to the quantity of Services used, received or ordered by the Company;
“CLI”	has the meaning given to Calling Line Identification in the CLI Guidelines;
“CLI Guidelines”	the Guidelines for the provision of Customer Line Identification Facilities and other related services, published by Ofcom, as may be amended or replaced from time to time;
“Company”	the company identified to Simwood via the Website responsible for placing the request for Service;
“Confidential Information”	all information which relates to the business, affairs, products, developments, trade secrets, know-how, personnel, customers and suppliers of each party (including, for the avoidance of any doubt, any information in relation to the Simwood Services) and which may be reasonably regarded as the confidential information of the disclosing party;
“Credit Balance”	a balance of an amount more than zero;
“Customer”	a third party to whom the Company provides a service using a Service provided under this Agreement, or any customer of that third party, and who is not an End User;
“Electronic Communications Network” or “ECN”	shall be as defined in the Act;
“Electronic Communications Service” or “ECS”	shall be as defined in the Act;



“Emergency Call”	a Call from an End User to the emergency services made by dialling 999 or 112;
“End User”	a person who is the ultimate user of services which depend upon a Service provided under this Agreement;
“General Conditions”	Ofcom’s General Conditions of Entitlement published as a schedule to Section 48(1) of the Act, as amended from time to time;
“Intellectual Property Rights”	all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, semi-conductor topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
“Help Centre”	Simwood’s wholesale customer handbook, as published at https://support.simwood.com and as amended from time to time;
“Minimum Term”	The minimum term for a Service agreed to by the parties;
“National Telephone Numbering Plan”	a document published by Ofcom from time to time under the section 56 of the Act;
“Network”	Simwood’s Electronic Communications Network or the Company’s and/or any other network operator’s Electronic Communications Network as the context requires, each run in accordance with the Act;
“Nuisance Call(s)”	an unwanted Call that causes annoyance to the receiver of the Call, and/or is a hoax Call, and/or is of an offensive, spiteful, abusive, indecent, defamatory, obscene, or menacing nature;
“Ofcom”	The Office of Communications of Riverside House, 2a Southwark Bridge Road, London SE1 9HA, or any successor body;



“PhonepayPlus”	the organisation that regulates phone-paid services in the UK, of Clove Building, 4 Maguire Street, London SE1 2NQ, or any successor body;
“Portability”	shall have the meaning given to it in General Condition 18 of the General Conditions published by Ofcom under Section 48 of the Communications Act 2003, as may be amended from time to time;
“PSTN”	Public Switched Telephone Network;
“Rates”	Simwood’s applicable rates for the provision of the Simwood Service(s) as set out in the Schedules, Price Lists and/or Rate Sheets provided to the Company, as may be amended from time to time in accordance with this Agreement;
“Revenue Share Service”	a service where an ECN or ECS provider pays to its customer operating such service an element of the conveyance charges which that provider receives for Calls to such service;
“Schedule”	a schedule of additional terms and conditions setting out further details of the Service to be provided;
“Service”	Any service that utilises all or part of the Simwood Network (wherever or however that service originates) provided under this Agreement or any Schedule hereto and “Services” shall be construed accordingly;
“Service Commencement Date”	The date on which Simwood starts to provide a Service to the Company; in respect of Outbound Wholesale Call Conveyance Services, the date on which Simwood begins to convey traffic according to clause 3.15;
“Terminating Operator”	the third party to whom Simwood routes a Call for termination or transit
“Time Band”	the hours of the day during which a Rate is in effect;
“Unit of Capacity”	sufficient interconnect capacity to carry 300,000 minutes of switched traffic per month (i.e. a notional E1)
“Unpaid Charges”	the sum of: (a) Charges accrued but which have not yet been invoiced; and (b) Charges which have been invoiced but have not yet been paid; and (c) any VAT applicable to the Charges;



“VAT”	Value Added Tax;
“Website”	the website www.simwood.com

- 1.2 references to clauses or schedules are references to clauses of or schedules to this Agreement and references to paragraphs are to paragraphs in the relevant Schedule;
- 1.3 references to persons will be construed so as to include any body corporate, unincorporated association, individual, firm, government, State or agency of the State, local or municipal authority or government body or any joint venture, association or partnership (whether or not having separate legal personality);
- 1.4 words used in the singular only shall include the plural where appropriate and vice versa;
- 1.5 the headings to the clauses of this Agreement and to the paragraphs of the schedules will not affect its construction;
- 1.6 references to the “parties” are to Simwood and the Company collectively and any reference to a “party” shall be a reference to one of them;
- 1.7 a reference to any statute or statutory provision shall be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or re-enacted;
- 1.8 any reference to a “day” (including within the phrase “Business Day”) shall mean a period of 24 hours running from midnight to immediately before the following midnight;
- 1.9 references to times are to London time unless otherwise specified;
- 1.10 a reference to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be treated as a reference to any analogous term in that jurisdiction;
- 1.11 The Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement.
- 1.12 If and to the extent that there is an inconsistency between the terms of any Schedule and this Agreement, the terms of the Schedule shall prevail unless expressly stated otherwise.



2 **Duration**

- 2.1 This Agreement shall commence upon Acceptance by Simwood of a request for Service by the Company and shall, unless terminated earlier in accordance with Clause 9 below, continue in force until all of the Services have been ceased in accordance with the Schedules hereto or the terms in this Agreement.
- 2.2 Subject to Clause 2.1 above, individual Services shall start on the Service Commencement Date and continue for their respective Minimum Term.

3 **Provision of the Services**

- 3.1 Simwood shall provide the Service to the Company.
- 3.2 Any equipment connected to Simwood's Network must: a) be technically compatible with the Service; b) not harm Simwood's Network or equipment or any third party's Network or equipment; and c) be connected and used in line with any relevant instructions, standards and laws.
- 3.3 Any connection between Simwood's Network and the Company's network shall be the responsibility of the Company and shall be provided at the Company's cost.
- 3.4 The Company undertakes that it will, in its contracts with its Customers, require such Customers to undertake that all apparatus which is attached (directly or indirectly) to Simwood's Network will conform to the relevant standard or approval for the time being designated under the Act and in the case of Customers who are resellers will require that they include and maintain such an undertaking in their contracts with further resellers and End Users.
- 3.5 The Company shall obtain all necessary permissions and consents from third parties necessary for:
 - 3.5.1 the provision and use of the Services; and
 - 3.5.2 the operation of the Company's Network which is to be connected to Simwood's Network pursuant to the provision of the Services,

and hereby warrants that all such permissions and consents as are necessary to enable the Company legally to receive the Services as envisaged by this Agreement have been obtained and will be maintained and kept up to date and it has the unimpaired right to receive the Services.



- 3.6 The Company shall not use Simwood's name, trade marks, service marks or any other Intellectual Property Rights of Simwood without the prior written consent of Simwood. If Simwood does give such written consent the Company shall submit to Simwood for prior written approval copies of all marketing and advertising materials involving the Simwood name, trade marks or service marks of Simwood, which the Company proposes to use in its marketing and advertising activities, prior to the use of such materials. Any consent that is given by Simwood under this clause shall be deemed withdrawn upon termination of this Agreement.
- 3.7 The Company shall not at any time make any statements or representations to third parties with regard to Simwood or in any way hold itself out as acting on behalf of Simwood.
- 3.8 The Company shall notify Simwood promptly of all of the Company's Customer or End User enquiries or problems regarding technical and operational issues with the System.
- 3.9 The Company shall be responsible for all sales, marketing and customer service activities relating to its Customer base.
- 3.10 The Company shall, upon request, provide Simwood with full information and/or materials regarding any products or services offered to the Company's Customers or End Users through utilisation of the Service.
- 3.11 Simwood shall be entitled to:
- 3.11.1 change the technical specification of the Services (provided that such changes do not materially affect the performance of the Services) where necessary for operational reasons, statutory or regulatory requirements;
 - 3.11.2 give the Company instructions (which the Company shall comply with) which Simwood believes to be necessary for health and safety reasons or for maintaining the quality of the Services;
 - 3.11.3 make alterations to any Service including (without limitation) conversions, shifts, reconfigurations and renumbers. Such alterations may result in disruption to the Service although Simwood will use reasonable endeavours to minimise any disruption to the Company and, where practicable, Simwood will give the Company as much notice as possible; and
- 3.12 Simwood warrants that:
- 3.12.1 the Services will be performed in a good and workmanlike manner and in material accordance with the service descriptions contained in the Help Centre;
 - 3.12.2 it shall employ or engage in the provision of the Services persons who are appropriately qualified, skilled and competent in the area into which they are employed; and
 - 3.12.3 it shall comply with the general conditions of its authorisation under the Act.



- 3.13 Simwood does not warrant that the Services will be fault free or free of interruptions. Simwood shall not be liable for any failure to provide the Services whether this arises from a technical or other failure of the System or otherwise.
- 3.14 Where Simwood is providing Outbound Wholesale Call Conveyance services, Simwood shall use best endeavours to convey Calls from the Company's network (wherever or however that service originates) over Simwood's network to the Terminating Operator's network. In the event that Simwood is unable to successfully route a Call, Simwood will send a signalling message back to the Company so that the Company may select an alternative route. The Company undertakes that it will have alternative routing options in place.
- 3.15 Simwood shall comply with requests for Portability on reasonable terms from other communications network operators as soon as reasonably practicable.
- 3.16 Simwood shall provide Portability services to the Company in accordance with the Number Portability Policy, as published and amended by Simwood from time to time.
- 3.17 Where access to Emergency Services has been requested by the Company, Simwood shall use reasonable endeavours to convey Emergency Calls to BT subject to the following conditions:
- 3.17.1 The Service shall only be available for access by persons using a telephone number conforming to the National Telephone Numbering Plan and originating from a calling party located in mainland UK (excluding Isle of Man and the Channel Islands);
- 3.17.2 The Company shall be responsible for ensuring that Simwood has been provided with all relevant Customer or End User information required to enable Simwood to provide access to Emergency Services;
- 3.17.3 Where a Voice Over Internet Protocol ("VOIP") service is being used, the Company undertakes to inform its Customers and End Users of the features of VOIP originated Emergency Calls, including: (i) that no outbound calling will be possible in the event of a loss of power; and (ii) Calls to Emergency Services may not convey the location of the Customer or End User and the calling party will be required to verbally confirm their location.

Simwood shall have no liability to the Company or to any Customer or End User for failure by the Company to comply with the terms of this Clause 3.17.

4 Provision of Information

- 4.1 The Company and Simwood agree promptly to supply the other upon request with all information and assistance which may reasonably be required to enable the other to perform their respective obligations hereunder or which is necessary to satisfy a demand from a law enforcement agency.
- 4.2 The Company shall provide Simwood with such information about Customers and End Users and their apparatus as necessary for Simwood to comply with regulatory or legal requirements or good industry practice and promptly on request by Simwood.



- 4.3 The Company shall be solely responsible for obtaining from Customers and End Users any information, access to premises for Simwood and its subcontractors and/or other cooperation needed by Simwood in connection with the provision of the Services.
- 4.4 Where the discharge of Simwood's obligations under this Agreement involves the processing of personal data, the Company appoints Simwood as the Company's data processor to process the personal data on behalf of the Company for the purposes of this Agreement.
- 4.5 The Company shall be responsible for ensuring that all Customer and End User records are up to date and accurate.

5 Use of Services

- 5.1 The Company will use the Services in accordance with the provisions of this Agreement and Simwood's relevant service literature (as provided to the Company by Simwood from time to time) including all security features provided by Simwood to protect the Services, and all other reasonable instructions as may be notified by Simwood to the Company from time to time and in accordance with the relevant provisions of the Act.
- 5.2 The Company undertakes to comply with the General Conditions.
- 5.3 The Company must take all reasonable steps to procure that the Service is not used:
 - 5.3.1 in a way that does not comply with the terms of any legislation or any codes of practice, regulations or any licence applicable to the Company, Customer or End User (as appropriate) or that is in any way unlawful or fraudulent or to the knowledge of the Company, Customer or End User has any unlawful or fraudulent purpose or effect; or
 - 5.3.2 in any way which infringes the Intellectual Property Rights of Simwood or any third party; or
 - 5.3.3 in connection with (without prejudice to the generality of clause 5.3.1 above) the carrying out of fraud or criminal offence against any other public telecommunications operator; or
 - 5.3.4 in any way that constitutes Artificial Inflation of Traffic; or
 - 5.3.5 in a way that in Simwood's reasonable opinion could materially affect the quality of any telecommunications service or other service provided by Simwood or any third party; or
 - 5.3.6 to make Nuisance Calls or to send "spam"; or
 - 5.3.7 to threaten, harass, stalk, abuse, disrupt or otherwise violate or infringe the rights (including but not limited to copyright, rights of privacy and publicity) of others; or
 - 5.3.8 to obtain access, through whatever means, to restricted areas of the underlying network; or



- 5.3.9 to send and receive data in such a way or in such amount so as to adversely affect Simwood's Network (or any part of it) or to adversely affect other customers of Simwood or of its suppliers; or
- 5.3.10 contrary to any instructions given under Clause 3.12.2 above; or
- 5.3.11 in a way which (in the reasonable opinion of Simwood) brings the name of Simwood into disrepute, or which places Simwood in breach of the Act or other permission or consent held by Simwood.
- 5.4 The Company agrees to include and maintain in its contracts with Customers conditions equivalent to those contained in clause 5.3 above, and in the case of Customers who are resellers to require that they include and maintain such conditions in their contracts with further resellers and End Users, and undertakes diligently and properly to enforce such conditions (including if appropriate by suspending or terminating the provision of its service to the Customer or End User) where the Company knows or reasonably suspects that a Customer or End User is in breach of such obligations.
- 5.5 The Company shall comply with the processes, procedures and requirements set out in the Help Centre.
- 5.6 Each party shall comply with the CLI Guidelines published by Ofcom.
- 5.7 The Company shall, at all times, comply with Simwood's Acceptable Use Policy as published and amended be amended by Simwood from time to time at on the Website at <https://simwood.com/aup>

6 **Charges and Payment**

- 6.1 The Company agrees to pay all Charges for the Services as set out in this Clause 6 or otherwise in a relevant the Schedule.
- 6.2 All Charges and other sums shall be payable in pounds sterling, unless otherwise agreed between the parties.
- 6.3 All Rates are quoted exclusive of VAT or any other applicable taxes which may from time to time be levied and such VAT and any other such applicable taxes shall be itemised separately on all invoices and bills and payable by the Company in addition to, and at the same time as, any Charges.
- 6.4 All Charges shall be calculated by reference to data recorded or logged by Simwood and not to data recorded or logged by the Company.
- 6.5 The Company will be liable for Charges in respect of:
 - 6.5.1 all Calls which appear to Simwood to emanate from or be destined for the Network whether or not the Call was authorised by the End User ; and
 - 6.5.2 any transaction which is authenticated according to the Company's IP address, user name and password or other means of identification.



- 6.6 The Company shall be responsible for the security of its passwords and for notifying Simwood of any changes to its IP addresses or other methods of authentication and authorisation
- 6.7 Simwood shall have the right to amend the Rates from time to time upon giving the Company not less than 24 hours' written notice.
- 6.8 Any fraud, Artificial Inflation of Traffic, other improper, or unauthorised, use of the Services committed by the Company, its Customer or End User or by any third party shall not relieve the Company of its payment obligations to Simwood under this Agreement
- 6.9 In the case of Services for which prepayment is required:
- 6.9.1 all Charges and sums due to Simwood shall be deducted from the Company's prepayment account, notwithstanding that the Company may not have received payment from its Customers or End Users or any other third party;
- 6.9.2 where VAT is applicable, the invoice will be in respect of the gross payment received and that amount net of the VAT charged will be credited to the prepayment account; and
- 6.9.3 the Company must maintain a Credit Balance in its prepayment account at all times. Simwood will specify the minimum level of individual payment which it will accept, in British Pounds, US dollars, or Euros, in the Help Centre. It is the sole responsibility of the Company to ensure sufficient credit remains on the account for traffic. Credit will only be added to the Company's account upon confirmation of cleared funds being received in Simwood's bank account. Any funds received other than between 9AM and 5PM on a Business Day will be added to the Company's account on the next following Business Day. Simwood may suspend any Service to which pre-payment applies with immediate effect in the event that the Company fails to maintain a positive balance of funds in its account.
- 6.10 For Outbound Wholesale Call Conveyance Services, the Company agrees to pay the Charges as set out in the Simwood Managed A-Z Termination list, as published and amended by Simwood from time to time.
- 6.11 Simwood shall provide web-site access to a summary showing:
- (a) destination or origination of Calls; and
 - (b) for each destination/origination, by Time Band:
 - (i) total number of minutes for each specified Rate;
 - (ii) a copy of the CDR; and
 - (iii) sub-total of Charges.
- 6.12 Simwood shall maintain and retain for a period of one year from its submission of each invoice true and accurate books of account and such information as may reasonably be required for calculation or verification of the amounts payable under such invoice (including information on individual Calls).



6.13 The Charge for conveyance of a Call is calculated by the following formula:

$$D = [A \times (B \div 60)] + C$$

Where:

A = the Call duration in seconds rounded up to the nearest second, or next billing increment if specified.

B = the appropriate pence (or other currency if specified) per minute Rate as set out in the Schedule.

C = the connection charge as set out in the Schedule.

D = the Charge rounded up to the next tenth of a penny (or other currency unit if specified).

Where a Call commences in one Time Band and concludes during another, the applicable Charges shall be determined using the appropriate pence per minute Rate (or other currency unit if specified), applied at the start of the call.

Where a minimum call duration is specified, the call charge will be based on the greater of these and A. Where a minimum call charge is specified, the call charge will be based on the greater of this and D.

The cost of a Call depends on time of day the call starts, destination and duration. The timed duration of a Call begins on the receipt of an answer signature from the Terminating Operator and ends on receipt by Simwood of a "call clear" message from either the Company's equipment or the Terminating Operator's equipment. It is the responsibility of the Company to ensure that this signal is received by Simwood.

Charges will only be incurred in respect of Calls successfully routed by Simwood.

6.14 Simwood shall not be held responsible for any situation in which a Call is generated in error, and/or is unauthorised for whatever reason, and the Company shall remain liable for the relevant Charges associated with that Call.

6.15 Simwood may in a separate invoice (containing the information referred to in these billing procedures) make backdated claims for amounts owed from a previous Billing Period which were not previously invoiced for technical or other reasons. Any backdated invoices must be submitted within twelve months of the date that the Services were rendered.

6.16 Simwood expressly reserves the right to offset any unpaid sums owing to it under this Agreement against any sums payable to the Company under this Agreement. If Simwood exercises its right of set off it shall notify the Company in writing that it is doing so, providing appropriate details.



- 6.17 Except where stated otherwise and subject to clause 6.15 Simwood shall invoice the Company monthly in arrears for all Charges and any other sums due under this Agreement. Payment terms may vary and will be as specified in each invoice. Payment shall be by any method specified in the Help Centre. Time shall be of the essence in respect of such payments and payment shall be deemed to have been made at the time when cleared funds are available in Simwood's bank account.
- 6.18 Charges shall accrue from the time any part of a Service is used or received.
- 6.19 Simwood will allow the Company to accumulate Unpaid Charges up to a maximum of the Company's credit limit, as advised by Simwood from time to time. In the event that at any time Unpaid Charges exceed the Credit Limit Simwood shall be entitled, at its option, to issue an interim invoice or to request an immediate payment on account by the Company. Any interim invoice issued under this clause shall be payable by the Company within seven (7) days of issue. Simwood reserves the right to require a deposit or guarantee or such other security as may be acceptable to Simwood prior to the provision of any Service or in the event that at any subsequent date there is in the opinion of Simwood a significant change in the circumstance of the Company. Details of such security will be notified separately by Simwood.
- 6.20 Simwood shall be entitled to withhold any sums payable to the Company and any rebate otherwise due to the Company in connection with a Service if:
- 6.20.1 in Simwood's reasonable opinion fraud or Artificial Inflation of Traffic has taken place; or
- 6.20.2 the corresponding repayment or rebate from BT or any other originating operator or any other transit operator to Simwood has been withheld; or
- 6.20.3 BT or any other originating operator or any other transit operator seeks to or threatens to withhold from Simwood payment of revenue or other payments deriving from or attributable to the same Service.

By way of example, such retention may be exercised by Simwood in circumstances in which BT is seeking to exercise rights under annexe `E` of the BT Standard Interconnect Agreement.

- 6.21 In the event that a claim is made against Simwood by BT or any other originating operator or any other transit operator, under an interconnection agreement or otherwise for recovery of sums previously paid, and in respect of which revenue share has already been paid or a rebate given to the Company, Simwood shall be entitled to recover the revenue payments and rebates made by it to the Company which derived from the same Revenue Share Service as gave rise to the revenue which BT or the other network provider is reclaiming from Simwood.



- 6.22 Simwood will consult with the Company with regard to the management of any retention right exercised against Simwood or claim made against Simwood made under this clause and will in good faith negotiate with a view to the Company taking over direct discussions with the claimant or that ultimate party, when traced through the interconnection chain, which has caused the claim to be made, but until terms have been agreed as to the transfer of management of the claim to the Company and the direct acceptance of liability as between the ultimate claimant and the Company, with all other intermediate parties being released, the obligation of Simwood is only to consult with the Company in relation to the management of the claim.
- 6.23 The Company also agrees to be bound by and to give effect to any decision resolving issues or disputes about revenue payment obligations which takes place under the terms of any dispute resolution process imposed in any interconnection agreements which are binding as between two parties in the interconnection chain notwithstanding that neither Simwood nor the Company is a party to any such agreement. Simwood will however use reasonable endeavours to enable the views of the Company to be represented in any such dispute resolution process.
- 6.24 If the Company wishes in good faith to dispute an invoice or any part of an invoice submitted under this Agreement, it should, before the invoice becomes due, deliver a notice in writing to Simwood detailing the nature of and reason for the dispute, along with any supporting documentation. Any undisputed part of the invoice should be paid in accordance with this Agreement.
- 6.25 In the event of written objection concerning a charge any prepayment balance will not be adjusted until resolution of the dispute in accordance with this clause 6.
- 6.26 If the parties are unable to resolve a dispute raised under Clause 6.21 above, within seven (7) Business Days, the dispute shall be referred to the Managing Director of Simwood and the Managing Director of the Company who shall attempt in good faith to resolve it. If the Managing Director of Simwood and the Managing Director of the Company are unable to resolve the dispute within 30 days of it being referred to them, either party may take such further steps as it considers appropriate to resolve the dispute, including the initiation of court proceedings.
- 6.27 Prior to recommencement of the Services by Simwood following suspension or termination in accordance with this Agreement, Simwood may require the Company to provide Simwood with a security deposit in a sum to be determined by Simwood (the "Deposit") and notified to the Company. Simwood shall be entitled to apply all or any amount of the Deposit against any outstanding Simwood invoices in the event the Company fails to pay such invoice in accordance with the provisions of this clause 6.



- 6.28 In the event of non-payment of any invoice or part thereof which is not the subject of a bona fide dispute under Clause 6.21 above Simwood reserves the right to charge daily interest on any outstanding amounts until payment is received in full at a rate equal to three percent (3%) per annum above the base lending rate of Lloyds TSB Bank plc as current from time to time whether before or after judgment until the date actual payment is received together with all costs reasonably incurred by Simwood in securing such payment and/or obtaining such judgment, as the case may be.
- 6.29 Any sums remaining in pre-paid accounts after termination of this agreement shall remain the property of Simwood and shall not be refundable by Simwood to the Company. In the event that Simwood decides, in its absolute discretion, to refund all or part of any pre-payment made by the Company following termination of this Agreement, Simwood shall have the right to levy an administration charge amounting to five percent (5%) of the unused credit.
- 6.30 No interest shall accrue or be due on any pre-payments received from the Company.

7 Forecasts

- 7.1 The Company shall, upon request, provide Simwood with forecasts of the volume of Calls that the Company expects to route over Simwood's Network. Forecasts shall be expressed in minutes per calendar month by destination and shall cover any period to be specified by Simwood, which shall not exceed 12 months. The Company shall ensure that its Forecasts are complete and accurate.
- 7.2 Simwood shall not be held responsible for the failure to supply Simwood Services to the Company due to a lack of capacity if the Company fails to provide Simwood with accurate Forecasts.

8 Suspension of Services

- 8.1 Simwood may (without prejudice to its other rights) suspend the provision of the Services in whole or in part, with immediate effect if:
- 8.1.1 Simwood is obliged to comply with an order, instruction or request of Government, an emergency services organisation, or other competent administrative or regulatory authority, including OFCOM or PhonepayPlus;
- 8.1.2 the Company is in material breach of this Agreement or its schedules (including failure to pay any sum due) and shall have failed to remedy such breach within 2 Business Days of receipt of a notice specifying the breach and requiring it to be remedied;
- 8.1.3 the Company commits a material breach of this agreement or its Schedules which cannot be remedied;
- 8.1.4 the Company is repeatedly in material breach of this agreement or its Schedules;
- 8.1.5 the Company's prepayment balance reaches zero, or in Simwood's reasonable opinion is imminently likely to do so;



- 8.1.6 Simwood has reason to believe a Service is being used in a manner which breaches or may breach the provisions of clauses 5.1, 5.2, 5.3 or 5.4;
- 8.1.7 There is a material and immediate threat to Simwood's network integrity or the integrity of the PSTN;
- 8.1.8 Ofcom gives a direction under the Act that the Company's entitlement to provide electronic communications networks or electronic communications services is suspended or restricted;
- 8.2 Simwood may (without prejudice to its other rights) suspend the provision of the Services in whole or in part, with immediate effect if:
 - 8.2.1 Simwood is entitled to terminate this Agreement pursuant to clause 9.1 below; or
 - 8.2.2 for operational reasons or in case of emergency.
- 8.3 If Simwood exercises its right to suspend service or part thereof pursuant to this clause 8 it shall whenever reasonably practicable give prior notice of such suspension and its expected duration and Simwood will not be liable for any loss, damage or inconvenience suffered by the Company.
- 8.4 Simwood may temporarily suspend the Service if it needs to carry out work relating to the upgrading, maintenance or backing-up of its Network (provided that Simwood has given the Company the maximum period of notice reasonably practicable in the circumstances).

9 Termination

- 9.1 Without prejudice to any other rights or remedies of Simwood, Simwood may terminate this Agreement with immediate effect by written notice:
 - 9.1.1 Upon the expiration of thirty (30) days' written notice following suspension in accordance with Clause 8.1 above;
 - 9.1.2 the Company fails to pass a volume of Calls greater than ten percent (10%) of its forecast to Simwood per month for a period of three (3) consecutive months;
 - 9.1.3 in the event that an administration order is made, or a receiver or administrative receiver is appointed over any of the other party's assets or undertakings or a winding-up resolution or petition is passed (otherwise than for the purposes of reconstruction or amalgamation); or
 - 9.1.4 if a party ceases to be authorised to provide an ECN or ECS under the Act;
- 9.2 Either party shall be entitled to terminate this agreement by giving to the other not less than ninety (90) days' notice of termination, such notice expiring no sooner than the end of the Minimum Term in any and all Schedules hereto.



- 9.3 Following termination of this Agreement pursuant to clauses 9.1.1, 9.1.2 or 9.1.3, and without prejudice to any rights or remedies available to Simwood, the Company shall pay to Simwood on demand all arrears of Charges due up to the date of termination under this Agreement or as a result of termination of this Agreement. This clause shall continue to be binding on the Company notwithstanding termination of this Agreement.
- 9.4 Simwood shall charge in accordance with the provisions of clause 6 for any Calls carried from the date of the last invoice until the date of termination of this Agreement. Simwood will issue payment for the remaining prepayment balance within seven (7) days (or otherwise as agreed) from the date of termination.
- 9.5 Any termination of this Agreement shall be without prejudice to the accrued rights of the parties on the date of such termination, and to the continuation in force of all provisions of this Agreement which expressly or implicitly survive such termination.

10 Indemnities

- 10.1 The Company will indemnify, defend and hold harmless Simwood from and against any liabilities, actions, losses, damages, judgments, costs, claims or expenses incurred by Simwood or legal proceedings which are brought or threatened against Simwood by a third party (including, without limitation, a Customer or an End User), as a result of:
- 10.1.1 a Service being or having been used in breach of clause 5.3 except where such breach results from fraud on the part of Simwood; or
- 10.1.2 the Company being or having been in breach of any of the provisions of clause 5.44, 11.1.2 or 3.17; or
- 10.1.3 any fraud or Artificial Inflation of Traffic
- 10.1.4 a call to a Revenue Share Service or as a result of any act or thing which happens in consequence of a call to a Revenue Share Service.
- 10.2 As a condition of the indemnity in clause 10.1 above, Simwood must:
- 10.2.1 notify the Company promptly in writing of any such claims or legal proceedings upon becoming aware of the same; and
- 10.2.2 make no admission relating to such claims or legal proceedings without the agreement of the Company, which shall not be unreasonably withheld or delayed; and
- 10.2.3 actively consult with the Company regarding the conduct of any action and have due regard to the Company's representations, and not agree any settlement of such claims or legal proceedings nor make any payment on account of them without the agreement of the Company, which shall not be unreasonably withheld.



11 **Warranties**

- 11.1 Each party warrants to the other party (such warranties being deemed to be repeated on each and every day during the term of this Agreement) that:
- 11.1.1 it has the unimpaired right and authority to enter into and perform this Agreement which shall constitute a binding obligation on it;
- 11.1.2 it will comply with its respective obligations under applicable data protection legislation and (without limitation):
- (a) will obtain and maintain all relevant registrations and consents, including (in relation to the Company) such registrations and consents as the Company should obtain and maintain to enable Simwood and its suppliers and subcontractors to process the personal data of Customers and End Users for the purposes of the performance by Simwood of its obligations under this Agreement;
 - (b) to the extent that the performance of its obligations under this Agreement involves or necessitates the processing of personal data, it shall act only on properly authorised instructions and in accordance with all applicable data protection laws; and
 - (c) shall take and implement all such technical and organisational security procedures and other measures necessary or appropriate to preserve the confidentiality of the personal data to which it has access under this Agreement and protect such data against unlawful processing,
- and this clause 11.1.2 shall survive termination or expiry of this Agreement; and
- 11.1.3 it will at all times comply with its obligations (if any) under the Privacy and Electronic Communications (EC Directive) Regulations 2003 and any subsequent revision, extension or replacement thereof.
- 11.2 Simwood cannot and does not guarantee a fault free service. Simwood gives no warranty that its network or Services shall be continuous, or will be free from faults. Simwood will, however, take steps to ensure its network and Services are reasonably fault free, and that service is reasonably uninterrupted.
- 11.3 Simwood gives no warranty or guarantee that the Service is satisfactory or suitable for the Company's purposes and the Company acknowledges that the Service was not designed with the Company in mind.

12 **Liability**

- 12.1 Except where otherwise expressly stipulated in this Agreement the following provisions set out the entire liability of Simwood (including liability for the acts and omissions of its employees, agents, consultants and subcontractors) to the Company in respect of:
- 12.1.1 any delay or default in the provision of the Services;
- 12.1.2 any use made by the Company of the Services;



- 12.1.3 any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Services.
- 12.2 Nothing in this Agreement shall exclude or restrict Simwood's liability for death or personal injury resulting from the negligence of Simwood or its employees while acting in the course of their employment or for damages incurred by the Company as a result of fraud on the part of Simwood.
- 12.3 Subject to clauses 3.13, 12.2 and 12.4, Simwood shall be liable for damage to the physical property of the Company or the property of any of its Customers caused by any negligent act or omission of Simwood or its employees PROVIDED THAT such liability of Simwood shall be limited to twenty percent (20%) of the Charges (exclusive of VAT) invoiced and collected by Simwood from the Company in the 12 month period prior to the relevant incident or incidents (or in the period from the date of this Agreement to the date of the relevant incident or incidents, if shorter than 12 months).
- 12.4 Simwood shall not be liable to the Company or any Customer in contract, tort or otherwise, including any liability for negligence, for any loss of revenue, business, time, opportunity, data, anticipated savings or profits or for any indirect or consequential loss howsoever arising.
- 12.5 Except as expressly set out in this Agreement, all conditions, warranties, terms, undertakings and obligations implied by statute, common law, custom, trade usage or otherwise are hereby wholly excluded.
- 12.6 Subject to the express terms of this Agreement, Simwood shall not be liable to the Company for any claims, proceedings or actions brought or made against the Company by persons pursuant to a contractual relationship with the Company. The provisions of this clause 12.6 shall apply notwithstanding that such claims, proceedings or actions arise through the act or omission of Simwood.
- 12.7 Subject to clauses 12.1, 12.2, 12.3, 12.4, 12.5 and 12.6 the maximum aggregate liability of Simwood in contract, tort, negligence or otherwise arising out of, or in connection with, this Agreement shall be limited in respect of any one event or series of two or more connected events to an amount equal to £500,000 and shall be limited with respect to the aggregate of all claims arising out of, or in connection with this Agreement to £1,000,000.
- 12.8 The provisions of this clause 12 shall continue to apply notwithstanding termination of this Agreement.

13 Notices

- 13.1 Any demand, notice or other communication given or made under or in connection with this Agreement by one party to the other will be in writing and will be delivered by one of the methods referred to in clause 13.2 unless otherwise agreed between the parties.



- 13.2 The addresses for delivery of a notice for the parties shall be the addresses that are listed at Companies House or the equivalent business register in the jurisdiction of the Customer at the time of delivery of the notice.
- 13.3 Any such demand, notice or other communication will be sent to the recipient at the address given in this Agreement, or to such other address as notified in writing from time to time, and will be deemed to have been duly given or made as follows:
- 13.3.1 if sent by prepaid first class post, on the second Business Day after the date of posting;
- 13.3.2 if delivered by hand upon delivery, unless such delivery occurs on a day which is not a Business Day or after 4.00pm on a Business Day, in which case it will be deemed to have been given or made at 9.00am on the next Business Day; or
- 13.3.3 if sent by email at the time and date specified on the email, subject to confirmation of receipt by a Simwood employee.

14 **Force Majeure**

- 14.1 Other than in respect of the Company's obligations to pay the Charges, neither party shall be liable to the other for any breach of this Agreement or failure or delay to perform any obligation where such breach or failure or delay was the result of any act of God, insurrection or civil disorder, war or military operations, inclement weather, failure or shortage of power supplies, flood, drought, lightning or fire, national or local emergency, acts or omissions of government, highway authority or other government or regulatory authority, compliance with any statutory obligation, industrial disputes of any kind, the acts or omissions of network operators or any other cause beyond that party's reasonable control. In the event of such breach, failure or delay the time for performance shall (except in relation to payment obligation in connection with the Charges) be extended by a period equivalent to that during which performance is so prevented provided that if such failure or delay persists for thirty (30) days or more, Simwood may, at its option terminate this Agreement by giving fourteen (14) days written notice of such termination to the Company.

15 **General**

- 15.1 This Agreement represents the entire understanding between the parties and supersedes any and all other written recorded and oral communications between them.
- 15.2 Both parties acknowledge that:
- 15.2.1 neither of them has been induced to enter into this Agreement by any representation, warranty or other assurance not expressly incorporated into it; and



- 15.2.2 in connection with this Agreement the only rights and remedies available in relation to any representation, warranty or other assurance are for breach of contract and that all other rights and remedies are excluded, except in the case of fraud.
- 15.3 Subject to Clause 15.4, this Agreement shall not be varied other than in writing, signed by the duly authorised representatives of Simwood and the Company except where Simwood has the right under this Agreement to make variations subject to written notice.
- 15.4 Simwood reserves the right to vary any provision in this agreement from time to time. Simwood shall provide the Company with 30 days' written notice of any change to the terms of this agreement.
- 15.5 The Company shall not assign or otherwise deal with all or any of its rights and obligations under this Agreement without Simwood's prior written consent.
- 15.6 The Company and Simwood each agree not to use or refer to the name of the other party in any article, announcement or published literature without the express prior written consent of the other party.
- 15.7 Nothing in this Agreement shall create a partnership or joint venture between the parties or constitute any party being the partner, agent or legal representative of the other.
- 15.8 Failure by either party to exercise or enforce any right conferred by this Agreement shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement thereof or of any other right on any later occasion.
- 15.9 Any Intellectual Property Rights shall remain the property of the party creating or acquiring the same and nothing in this Agreement shall be deemed to confer any assignment or licence of any Intellectual Property Rights whatsoever of one party to the other.
- 15.10 Each party undertakes to the other that it shall keep and shall procure that its directors, officers, employees, servants, agents and subcontractors (as appropriate) shall keep Confidential Information secret and confidential and shall only use Confidential Information in accordance with performing this Agreement and in particular not use, copy, adapt, alter or part with possession of, or disclose to any other third party any Confidential Information PROVIDED THAT:
- 15.10.1 nothing herein shall prevent the use or disclosure of any Confidential Information not treated by the other party as confidential or which does not properly belong to it; and
- 15.10.2 the party receiving such Confidential Information shall not be prevented from using or disclosing the same to the extent that it is in or comes into the public domain otherwise than through the default or negligence of the receiving party, or to the extent that its disclosure is required by law.



- 15.11 The parties agree that damages alone would not be an adequate remedy for the breach of any of the provisions of clause 15.10 and accordingly that, without prejudice to any other rights and remedies available, either party shall be entitled to seek injunctive or other equitable relief to remedy or prevent any breach or threatened breach of clause 15.10.
- 15.12 In the event that any provision of this Agreement is held to be void, illegal or unenforceable the relevant provision shall be deemed not to be or never to have been or formed a part of this Agreement and the remaining provisions of this Agreement shall continue in full force and effect.
- 15.13 A person who is not party to this Agreement has no right under the Contract (Rights of Third Parties) Act 1999 or otherwise to enforce any term of this Agreement.
- 15.14 This Agreement shall be governed, construed and take effect in all respects in accordance with English law. The parties irrevocably submit to the exclusive jurisdiction of the English courts for the purpose of hearing and determining any dispute arising out of or in connection with this Agreement save that the Company shall not object to Simwood seeking enforcement of any resultant judgment in any court in any territory having jurisdiction over the Company or its assets.
- 15.15 For the avoidance of doubt, it is hereby agreed and declared that Simwood shall at all times be free to enter into contracts relating to the Services with such other third parties as it sees fit and, where the Company is to resell the Services, the Company acknowledges that it is not Simwood's exclusive reseller for the Services.
- 15.16 Simwood shall be entitled to sub-contract any obligations it may have under this Agreement. Simwood may at its sole discretion provide any Service either directly or through some combination of subcontractors, subsidiaries and/or subsidiaries of Simwood's holding company.